POLICY NOTE

The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 7) Regulations 2021

SSI 2021/425

The above instrument was made in exercise of the powers conferred by sections 94(1)(b)(i) and 122(2) of the Public Health etc. (Scotland) Act 2008 ("the 2008 Act"). Section 122(5) of the 2008 Act states that regulations under section 94(1) are subject to the affirmative procedure. However, section 122(6) provides that the affirmative procedure will not apply if the Scottish Ministers consider that the regulations need to be made urgently. In such situations, section 122(7) applies.

Section 122(7) of the 2008 Act sets out that emergency regulations must be laid before the Scottish Parliament and cease to have effect on the expiry of the period of 28 days beginning with the date on which the regulations were made unless, before the expiry of that period, the emergency regulations have been approved by a resolution of the Parliament.

This instrument amends the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 to expand the eligible vaccinated arrival category in a number of areas.

It updates the list of countries from where a person vaccinated with an authorised vaccine may be an eligible vaccinated arrival and the proof needed for this. It also updates the provisions to recognise certain WHO emergency use vaccines. It provides further for the recognition, in respect of countries already accepted into the eligible vaccinated arrivals scheme that, where they have overseas territories which use their respective mainland countries' certification solutions, those overseas territories are also accepted into the scheme.

It amends the provisions on vaccine rollouts of British Overseas Territories and Crown Dependencies to include these under the list of relevant countries. This clarifies that people vaccinated in these territories under the territories' own vaccination programme are in scope of the policy in the same manner as all other relevant countries and territories.

This instrument removes the requirement that an authorised vaccine is administered in a "relevant country" or the UK, allowing for a relevant country to certify recognised vaccines administered elsewhere if appropriate.

The instrument also makes an amendment to provide for a person who has received one dose of a two dose vaccine under the UK vaccine roll-out overseas and received the other dose in another country, as vaccinated under the UK vaccine roll-out overseas.

It widens the definition of eligible vaccinated arrival for those participating in clinical trials.

It clarifies the clinical exemptions which apply to eligible vaccinated arrivals.

It extends the scope of the eligible vaccinated arrival scheme so it covers all children under the age of 18, whether they are resident in a relevant country or not.

It inserts a new definition of EU Digital Covid Certificate ("EUDCC").

It amends the acceptable proof of vaccine and need to prove residency requirements for US travellers.

It removes the requirement on certain categories of transport crew, travelling in the course of their work, to complete the Passenger Locator Form (PLF) and passengers transiting through Scotland without passing through immigration control, including red list arrivals.

It updates the definition of a Polymerase Chain Reaction (PCR) test to align with the UK definition.

This instrument adds a specified competition to the list in Schedule 6.

Background

1. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (S.S.I. 2021/322) ("the International Travel Regulations") were made on 16 September 2021. They were laid in the Scottish Parliament on 16 September and came into force on 20 September 2021.

2. The International Travel Regulations revoked and replaced the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 (SSI 2020/169), the Health Protection (Coronavirus, Public Health Information for Passengers Travelling to Scotland) Regulations 2020 (SSI 2020/170) and Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/20).

3. Since coming into force, the International Travel Regulations have been updated by various amending regulations. Both the International Travel Regulations and the amending regulations were made urgently light of wider changes being made across the UK and to take account of the desire to ease restrictions where doing so is supported by relevant clinical evidence and advice.

4. The amendments made by these Regulations come into force at 04:00 on 22 November 2021.

Policy Objectives

5. The overarching policy aim of this instrument is to update Scotland's approach to international travel, removing or lessening restrictions where that approach is consistent with clinical evidence and advice while balancing the need for continued public health measures to be applied where needed.

Vaccines

6. These Regulations amend the provisions on eligible vaccinated arrivals.

7. The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 4) Regulations 2021 and The Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 6) Regulations 2021, expanded the list of relevant countries under the eligible vaccinated arrival programme.

Expansion of countries

8. This instrument expands this list further to include countries whose vaccination programmes meet the necessary criteria. The following countries are added to schedule 1A list of relevant countries:- Belarus, Bolivia, Democratic Republic of the Congo, Dominican Republic, Ecuador; Laos; Libya; Malawi; Mozambique; Samoa; Senegal; Vanuatu; Zambia, and Zimbabwe.

9. If travellers from those countries can show, using evidence issued by the competent health authority of any of these destinations, that they have been fully vaccinated with a vaccine which is authorised for supply in the UK (currently Pfizer/BioNTech, Oxford/AstraZeneca, Moderna, Janssen), or – following consequential amendments in this instrument – the World Health Organisation emergency use list (those previously specified vaccines, plus Sinopharm Beijing, Sinovac and Covinax) then they will meet the definition of "eligible vaccinated arrival" and will not be required to take a pre-departure test, self-isolate after arrival in Scotland, or take a day 8 test.

Other countries' overseas' territories

10. It provides further for the recognition, in respect of countries already accepted into the eligible vaccinated arrivals scheme that, where they have overseas territories which use their respective mainland countries' certification solutions, those overseas territories are also accepted into the scheme.

WHO Emergency Use List Vaccines

11. This instrument expands the definition of authorised vaccine to include certain WHO Emergency Use List Vaccines. This ensures alignment across the UK on the use of these vaccines. Vaccines authorised by WHO for emergency use that have not been submitted to the MHRA for authorisation in the UK are Sinopharm Beijing, Sinovac and Covaxin.

UK vaccine roll-out overseas

12. This instrument amends the definition of "UK vaccine roll-out overseas", so as to remove the reference to residents of the British Overseas Territories and Crown Dependencies. In addition, the British Overseas Territories and Crown Dependencies have been added to the list of relevant countries in schedule 1A of the International Travel Regulations. This clarifies that people vaccinated under those territories' own vaccination programmes, as well as the UK vaccine roll-out overseas, are in scope of the policy and accordingly, people vaccinated in these

territories will now require proof of vaccine certification that meets the minimum dataset, in the same manner as all other relevant countries and territories.

Relevant country

13. This instrument removes the requirement that an authorised vaccine is administered in a "relevant country". An individual may have been vaccinated in one country but have proof of vaccination from another. The vaccines referenced in paragraph 9 above are accepted irrespective of where administered if vaccination is evidenced by a valid certificate issued by a relevant country. The process of inclusion into the fully vaccinated travel policy is based on the certificate issued. The country of vaccination is a less relevant factor for public health purposes than the issuing authority of the vaccine certification.

Vaccine doses

14. This instrument updates the provisions that relate to persons vaccinated against coronavirus in the Crown Dependencies (Guernsey, Jersey, the Isle of Man) or any of the United Kingdom overseas territories. These territories are now treated as "relevant countries" rather than only being considered through the "UK vaccine rollout overseas". It permits mixed doses of authorised vaccines, vaccines to be administered in different jurisdictions, and certification from any relevant country where a resident of a Crown Dependency or UK overseas territory may have been vaccinated.

Clinical trials

15. This instrument recognises as an "eligible vaccinated arrival", a passenger who can show that they have previously participated, or are currently participating, in a Covid-19 vaccine clinical trial, that has reached at least Phase 2 or Phase 3 of the trial, in a World Health Organisation Stringent Regulatory Authority ("WHO SRA") country or the European Medicines Agency through evidence which meets the minimum dataset. WHO SRA countries include Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, and Norway, alongside the UK and US who are already recognised.

16. This requires participants to provide adequate proof of participation in a trial from a competent health authority. Eligible individuals would be treated as 'fully vaccinated' for the purposes of the travel measures – meaning they do not have to take a pre-departure before travelling to Scotland, self-isolate after arrival in Scotland, or take a day 8 test.

Clinical exemption

17. The provision related to clinical exemption from vaccination is updated to align more closely with the equivalent provision in the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021.

Under 18s

18. It expands the definition of eligible vaccinated arrival to cover those under 18 whether or not they have been vaccinated if they are coming from a non-red list country. The current position is that under 18s ordinarily resident in the UK and in a relevant country are considered eligible vaccinated arrivals. This expansion ensures there is no disparity in treatment of under 18s and also aligns with the UK approach.

EUDCC

19. It updates the definition of the EU Digital Covid Certificate (EUDCC). The UK and 15 other countries/territories have now obtained equivalency status under EUDCC which means that their vaccine certificates and certification solutions are treated the same as EUDCC. This amendment enables those coming from the countries/territories with equivalency status to use these certificates for inbound travel.

20. Currently for pre-departure test requirements a negative test result presented through the EUDCC is sufficient. The expansion in equivalency status referenced in paragraph 19 above applies to vaccine certification. It does not apply to pre-departure testing. So to ensure adequate standards are met for pre-departure testing this instruments amends the definition to clarify that proof of negative pre-departure test status is applicable only to EU member states, EFTA/EEA and micro states.

US state certificates and residency requirements

21. It updates the evidence required to prove vaccination status by including certain US state level certificates which meet all required criteria. These are as follows: - New York State Excelsior Pass Plus, California Digital COVID-19 Vaccine Record, and Washington state WA Verify pass.

22. It amends the provisions to remove the requirement for a person to prove US residency as well as vaccination status for those vaccinated in the USA. This was a requirement during the pilot phase of this policy and is no longer required. The US residency requirement is also removed for those taking part in a clinical trial in the USA.

PLF exemption for Transport Crew

23. Transport crew travelling in the course of their work were exempt from completing the Passenger Locator Form (PLF), unless they had travelled in a part of the vehicle/vessel/aircraft accessible to passengers. Accurate information for contact tracing protocols in a number of transport settings can now be obtained directly from carriers from the passenger manifest by requesting detail on the part of the vessel, vehicle or aircraft in which a crew member was working and there is no requirement for downstream (in country checks). The manifest is a written instrument containing a true account of the passengers and/or cargo of a vehicle/vessel/aircraft.

24. The Regulations therefore remove the requirement on those transport workers to have travelled in a conveyance separated from passengers so that the exemption will apply whether or not they have travelled in a passenger carrying conveyance.

25. New exemptions from completing the PLF have been added for road haulage workers and passengers transiting through Scotland arriving from any country or territory without passing through immigration control.

PCR definition

26. This instrument amends the definition of a PCR test as it is defined in regulation to align it with the definition in the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021. This is to ensure consistency in the respective definitions and to provide more detail in the sensitivity and specificity standards required of an accepted PCR test.

Addition to the list of specified competitions

27. This instrument adds international netball fixtures for the Scottish Thistles Netball Team. The Scottish Thistle netball team are participating in one training match and three ranking test series matches against Barbados between 24 November and 5 December. This addition will facilitate the matches to take place in accordance with established protocols including bespoke testing regimes.

Consultation

28. This instrument is being made urgently in Scotland to make further amendments to the public health measures in respect of international arrivals to the UK.

29. Each of the four nations in the UK is required under their own relevant regulations to conduct regular reviews, and as those reviews are conducted there is the possibility of divergence from that initial four nations aligned approach, either on the need for the International Travel Regulations themselves or for any of the measures imposed by those Regulations. Such policy divergence may include the Scottish Government, or any of the other three administrations in the UK, reaching a different view on any aspect of the regulations, reflecting differences in the prevalence of COVID-19 in that particular nation at any review point.

30. The continued pace of the work on this and changing circumstances both in Scotland and other countries has meant limited consultation with external stakeholders in Scotland, but there has been ongoing discussion and dialogue by Scottish Government with Police Scotland, Crown Office and Procurator Fiscal Service, Border Force in Scotland, Public Health Scotland and key airports in Scotland as the policy has continued to be shaped.

Impact Assessments

31. Impact assessments will be published on Legislation.gov.uk.

Scottish Government
COVID Co-ordination Directorate
18 November 2021